

RECORDATION NO. 75768 Filed & Recorded

AGREEMENT and ASSIGNMENT

JUL 1 1974 - 11:00 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT and ASSIGNMENT dated as of this 21st day of

June, 1974, between EMONS LEASING CO., INC., a corporation of the State of New Jersey with an office at 10 Fieldcrest Drive, East Brunswick, New Jersey (Vendor), and CENTRAL PENN NATIONAL BANK, 5 Penn Center Plaza, Philadelphia, Pennsylvania, a national banking association organized under the laws of the United States of America (Assignee).

WHEREAS, Vendor and MARYLAND AND PENNSYLVANIA RAILROAD CO., a corporation of the Commonwealth of Pennsylvania and the State of Maryland (Vendee), have entered into a Conditional Sale Agreement dated as of June 12, 1974 (Sale Agreement), providing for the sale on the conditions therein set forth, by the Vendor to the Vendee, of railroad boxcars as more particularly described therein, for use or intended for use in interstate commerce (Equipment), a copy of the original Conditional Sale Agreement being attached hereto;

NOW, THEREFORE, THIS AGREEMENT and ASSIGNMENT WITNESSETH that, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by Assignee to Vendor, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. Vendor hereby sells, assigns, transfers and sets over to Assignee, its successors and assigns:

(a) All right, title and interest of Vendor in and to the Sale Agreement, any and all amounts which may be or become due or owing by Vendee to Vendor under the Sale Agreement on account of the purchase price, and any other sums which may become due from Vendee under the Sale Agreement.

(b) All of Vendor's rights, powers, privileges and remedies under the Sale Agreement (without any recourse, however, against Vendor solely by reason of the failure of Vendee to make any

any of the payments provided for in, or otherwise to comply with, any of the provisions of the Sale Agreement); provided, however, that this Agreement and Assignment shall not subject Assignee to, or transfer, or pass, or in any way affect or modify, the liability of Vendor in respect of its obligations contained in the Sale Agreement, or relieve Vendee from its obligations to Vendor under the Sale Agreement, it being understood and agreed that, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Sale Agreement, all obligations of Vendor to Vendee in respect of the Equipment shall be and remain enforceable by Vendee, its successors and assigns, against and only against Vendor.

In furtherance of the foregoing assignment and transfer, Vendor hereby authorizes and empowers Assignee, in Assignee's own name or in the name of Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for Vendor, to ask, demand, sue for, collect, receive and enforce any and all sums to which Assignee is or may become entitled under this Agreement and Assignment and compliance by Vendee with the terms and agreements on its part to be performed under the Sale Agreement, but at the expense and liability and for the sole benefit of Assignee.

Anything in this Agreement and Assignment to the contrary notwithstanding, Assignee shall have no right to make demand upon Vendee for the purchase payments or any other sums due under the Sale Agreement, unless and until there shall have occurred an event of default which remains uncured during any applicable grace period under that certain Loan Agreement between Assignee and Vendor, et al, dated the terms of which are incorporated herein by reference thereto.

2. Vendor represents and warrants that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Sale Agreement set forth to be performed and complied with by Vendor. Vendor fur-

ther represents and warrants to Assignee, its successors and assigns, that at the time of execution and delivery of the Sale Agreement Vendor had legal title to the Equipment; the title to the Equipment was free of all claims, liens and encumbrances of any nature except only the rights of Assignee under that certain Chattel Mortgage and Security Agreement dated *June 21*, 1974, a copy of which has been delivered to Assignee, and the rights of Vendee under the said Sale Agreement.

Vendor further represents and warrants to Assignee, its successors and assigns, that the Sale Agreement was duly authorized and lawfully executed by Vendor for a valid consideration and is binding upon Vendor in accordance with its terms, and that the Sale Agreement is now in force without amendment thereto. Vendor further covenants and agrees that it will defend the title to the Equipment against the demands of all persons whomsoever, subject, however, to the provisions of the Sale Agreement and the rights of Vendee under the terms thereof.

3. Vendor covenants and agrees with Assignee that, in any suit, proceeding or action brought by Assignee under the Sale Agreement for any payment due and owing, or to enforce any provision of the Sale Agreement, or to recover any other sums due from Vendee in respect of the Equipment, Vendor will save, indemnify and keep harmless Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of Vendor arising out of a breach by Vendor of any obligation in respect of the Equipment or any obligation of Vendor pursuant to the Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Vendee by Vendor. Any and all such obligations shall be and remain enforceable by Vendee against, and only against, Vendor and shall not be enforceable against Assignee or any party or parties in whom title to the Equipment or any unit thereof

or the rights of Vendor under the Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers. Vendor will indemnify, protect and hold harmless Assignee from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes, or is claimed to infringe, on any patent or other right.

4. Vendor represents and warrants that, as soon as practicable after the Closing Date (as hereinafter defined), each unit of the Equipment delivered under the Sale Agreement will be plainly, distinctly, permanently and conspicuously marked by stenciling or otherwise on each side of each unit, in letters not less than one inch in height, with the following legend:

CENTRAL PENN NATIONAL BANK, SECURED PARTY.

5. On the Closing Date, which shall be the date which is specified under the aforesaid Loan Agreement, there shall be delivered to Assignee:

(a) A certificate, or certificates, signed by an authorized representative of Vendee, stating that the units of the Equipment have been inspected on behalf of Vendee; that such units are in good order and condition; that such units conform to all applicable Interstate Commerce Commission requirements and specifications and all standards recommended by the Association of American Railroads; and that such units are subject to the terms of the Sale Agreement.

(b) Certificates of Vendor, or an authorized representa-

tive of Vendor, and of Vendee to the effect that the Sale Agreement is in full force and effect and no default exists under the terms thereof, and no event has occurred which with the passage of time would constitute a default under the terms thereof.

(c) A favorable opinion of Messrs. Weiss, Rotharb, Kaminsky and Slade, counsel for Vendor, stating that (i) the Sale Agreement has been duly authorized, executed and delivered and is a valid and binding instrument enforceable in accordance with its terms, (ii) this Agreement and Assignment has been duly authorized, executed and delivered by Vendor and is a valid and binding instrument enforceable in accordance with its terms, (iii) Assignee is vested with all the right, title and interest of Vendor in and to the Sale Agreement purported to be assigned to Assignee by this Agreement and Assignment, (iv) the Sale Agreement and this Agreement and Assignment are in recordable form for filing with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and, when recorded, will validly vest in Assignee a perfected security interest in the Equipment, free of all claims, liens, encumbrances and other security interests, except the rights of Vendee under the Sale Agreement, and no other filing or recordation is necessary to protect the rights of Assignee in any state of the United States of America or the District of Columbia, and (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Sale Agreement.

6. Upon request of Assignee, its successors and assigns, Vendor will execute any and all instruments which may be necessary or proper in order to discharge of record any instrument evidencing any interest of Vendor in the Equipment.

7. Assignee may assign all or any of its rights under the Sale Agreement, including the right to receive payments due or to become due to it thereunder. In the event of any such assignment, any

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such subsequent or successor assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of Assignee hereunder.

8. Vendor covenants and agrees that it will, from time to time and at all times, at the request of Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance, and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to Assignee or intended to be.

9. The terms of this Agreement and Assignment, and all rights and obligations hereunder, shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Sale Agreement is incorporated herein by reference and shall be deemed a part of this Agreement and Assignment.

11. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Assignment to be duly executed as of the date first above written.

Attest:

/Melvin L. Slode

EMONS LEASING CO., INC.

By /Robert Grossman, Pres.

CENTRAL PENN NATIONAL BANK

Attest:

/Paul Pyfer, Asst. Cashier By /S. L. QV 11-4

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS.

On this 21st day of June, 1974, before me personally appeared Paul Peffer, to me personally known, who, being by me duly sworn, says that he is Asst. Cashier of CENTRAL PENN NATIONAL BANK; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Pearl H. Lauer
Notary Public

My Commission Expires: 1/29/75

STATE OF *Pennsylvania*:
COUNTY OF *Philadelphia*: SS.

On this *21st* day of *June*, 1974, before me personally appeared *Robert Grossman*, to me personally known, who, being by me duly sworn, says that he is of EMONS LEASING CO., INC.; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Pearl H. Louvering
Notary Public

My Commission Expires: *1/29/75*

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

MARYLAND AND PENNSYLVANIA RAILROAD CO. hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment dated as of June 21, 1974, which is incorporated in this acknowledgment by reference, and shall be deemed a part thereof; and MARYLAND AND PENNSYLVANIA RAILROAD CO. confirms that Assignee has the security interest in the Equipment created in the Sale Agreement.

MARYLAND AND PENNSYLVANIA RAILROAD CO.

By s/Robert Grassman, V.P.

Dated June 21, 1974

I hereby certify that the
within AGREEMENT AND ASSIGNMENT
dated June 21, 1974, and
CCNDITIONAL SALE AGREEMENT
dated May 1, 1974, are true and
correct copies of the originals.

LeRoy E. Perper

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WHITE and WILLIAMS
LAND TITLE BUILDING
PHILADELPHIA-19110
LO 3-0771